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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL NORWOOD	:	CIVIL NO: 1:CV-01-1005
Plaintiff,	:	
	:	(Judge Caldwell)
v.	:	
	:	(Magistrate Judge Smyser)
DONALD ROMINE,	:	
Defendant	:	

FILED
HARRISBURG, PA

ORDER

SEP 28 2001

MARY E. D'ANDREA, CLERK
PER *[Signature]* DEPUTY CLERK

On June 6, 2001, the plaintiff, a federal prisoner proceeding *pro se*, commenced this action by filing a complaint. On June 11, 2001, the plaintiff filed an amended complaint.

On July 16, 2001, the plaintiff filed a motion seeking an order directing the United States Marshal to serve his amended complaint on the defendant. By an Order dated July 20, 2001 that motion was denied. Because the plaintiff is not proceeding *in forma pauperis* in this case, we determined that the plaintiff must serve his amended complaint on the defendant in accordance with Fed.R.Civ.P. 4. We noted that pursuant to Fed.R.Civ.P. 4(d) the plaintiff may request that the defendant waive service of the summons and complaint. We further noted that if the plaintiff follows the procedures of Fed.R.Civ.P.


4(d) and requests that the defendant waive service of the summons and complaint and the defendant refuses that request, we would consider ordering the United States Marshal to serve the defendant and order the defendant to show cause why he should not pay the cost of service.

On August 27, 2001, the plaintiff filed a motion for an order directing the United States Marshal to serve the amended complaint on the defendant and directing that the defendant bear the cost of such service. The plaintiff attached to this motion copies of the Notice of Lawsuit and Request for Waiver of Service of Summons, Duty to Avoid Unnecessary Costs of Service of Summons, and Waiver of Service of Summons forms which he asserts he sent to the defendant on July 24, 2001 and to which the defendant has not responded.

We will direct the United States Marshal to serve the defendant with the amended complaint. However, we will not order the defendant to pay the cost of service. Upon further review of Rule 4(d), we conclude that the duty to avoid

unnecessary costs of serving the summons does not apply to an employee of the United States.

AND NOW, this 28th day of September, 2001, **IT IS HEREBY ORDERED** that the plaintiff's motion (doc. 8) for an order directing the United States Marshal to serve the summons and amended complaint on the defendant and for the defendant to bear the costs of such service is **GRANTED IN PART**. The United States Marshal is directed to serve the summons and amended complaint on the person of the defendant.


J. Andrew Smyser
Magistrate Judge

Dated: September 28, 2001.

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

September 27, 2001

Re: 1:01-cv-01005 Norwood v. Romine

True and correct copies of the attached were mailed by the clerk
to the following:

Michael Norwood
USP-LEW
U.S. Penitentiary at Lewisburg
06970-014
P.O. Box 1000
Lewisburg, PA 17837

cc:

Judge	()	() Pro Se Law Clerk
Magistrate Judge	()	() INS
U.S. Marshal	()	() Jury Clerk
Probation	()	
U.S. Attorney	()	
Atty. for Deft.	()	
Defendant	()	
Warden	()	
Bureau of Prisons	()	
Ct Reporter	()	
Ctroom Deputy	()	
Orig-Security	()	
Federal Public Defender	()	
Summons Issued	()	with N/C attached to complt. and served by: U.S. Marshal () Pltff's Attorney ()
Standard Order 93-5	()	
Order to Show Cause	()	with Petition attached & mailed certified mail to: US Atty Gen () PA Atty Gen () DA of County () Respondents ()
Bankruptcy Court	()	
Other _____	()	

MARY E. D'ANDREA, Clerk

DATE:

9/28/01

BY:

657
Deputy Clerk